

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE FOURTEENTH DAY OF JULY
TWO THOUSAND AND ONE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 11606 of 2001

Between:

R.Jogarao S/o Bairagi

D.No. 39-33-94, Madhavadhara Vuda Colony, Visakhapatnam-18

..... PETITIONER

AND

- 1 The Chairman, Visakhapatnam Port Trust, Visakhapatnam -530 035
- 2 The Chief Mechanical Engineer, Visakhapatnam Port Trust,

Visakhapatnam -530 035

- 3 The Chief Port Administrator, Port Managment Boards, Andaman &

Nicobar Islands, Port Blair

- 4 Assistant Secretary (Shipping), Secretariat
Andaman and Nicobar Administration, Port Blair
- 5 Under Secretary, Ministry of Surface Transport,
Transport Bhavan, Parliament street, Government of India, New

Delhi

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an order, direction or a writ one in the nature of MANDAMUS declaring the action of the respondents 3 & 4 in not passing revised order counting the past service rendered by the petitioner in Air Force and further before the 3rd and 4th respondents in continuation of the service before the respondents 1 and 2, for all purposes including fixation of pay scales as illegal and arbitrary and consequently direct the respondents count the past service rendered by the petitioner in Air Force and further before the 3rd and 4th respondents prior to joining before the respondents 1 and 2, for all purpose including fixation of pay scales, and further direct the respondents 1 to 4 to pay all financial benefits incidental thereto forthwith and with costs of this WP.

Counsel for the Petitioner:MR.A.SRINIVASA SARMA

Counsel for the respondents 1 and 2: Sri K.Sreenivasa Murthy

Counsel for the Respondents3 and 4: MR.L.PRABHAKAR REDDY

The Court made the following:

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ORDER:

Further, the 3rd and 4th respondents, before relieving the petitioner, forced him to

give "Technical Resignation" and accordingly, he gave his technical resignation and thereafter, he was relieved on

31-03-1999. While so, the 2nd respondent-Chief Mechanical Engineer pointed out as to the technical resignation in view of the fact that the 1st respondent-Chairman accorded permission for appointment of the petitioner as Foreman (Electrical) by transfer to their office, and accordingly, sent a fax message for clarification. Basing on the said fax message, the petitioner submitted a representation dated 12-4-1999 to the 3rd respondent-Chief Port Administrator, requesting to cancel his technical resignation, to revise the earlier order into transfer retaining his lien on the job under their Management Board and to settle the outstanding dues to him. But there was no response from the officials. Later, he submitted detailed representations dated 17-09-1999 and

03-02-2000 respectively to the 5th respondent, who is the controlling authority, in this regard. The 2nd respondent passed orders on 21-08-1999 granting regular pay and allowances attached to the post of Foreman (Electrical). Further, the 3rd and 4th respondents did not pass revised order clarifying that the technical resignation is only a formality, which does not prevent from counting his past service for all purposes including fixation of pay and that his appointment in the 1st and 2nd respondents is on permanent transfer basis. Aggrieved by the same, the petitioner filed the present writ petition seeking a mandamus to declare the action of respondents 3 and 4 in not considering his case on permanent transfer basis as illegal and arbitrary.

Heard both sides.

The learned counsel for the petitioner contended that the petitioner joined in the 3rd and 4th respondents' organization on

12-2-1990 and thereafter, he submitted a representation to the Central Government seeking his absorption in the organization of the 1st and 2nd respondents. Learned counsel further contended that instead of relieving the petitioner from service keeping his lien, the 3rd and 4th respondents wrongly took technical resignation from

the petitioner and therefore, the service rendered by the petitioner from 12-2-1990 to 31-03-1999 has to be reckoned as service rendered by him. Therefore, he prays to allow the writ petition.

On the other hand, the learned Standing Counsel appearing for the 1st and 2nd respondents contended that unless the 3rd and 4th respondents gave a revised order, the service rendered by the petitioner under 3rd and 4th respondents cannot be taken into consideration and it is for the 3rd and 4th respondents to issue revised proceedings.

The learned Standing Counsel appearing for the 3rd and 4th respondents contended that since the petitioner tendered his resignation and the same was accepted and that the management of the 1st and 2nd respondents is entirely different from that of the management of the 3rd and 4th respondents the question of transferring the petitioner from the organization of the 3rd and 4th respondents to the organization of the 1st and 2nd respondents does not arise and as such, the relief prayed by the petitioner in this writ petition is liable to be dismissed.

I have perused the entire material available on record.

The factual matrix is not in dispute. On 12-2-1990, the petitioner joined in the organization of the 3rd and 4th respondents as Junior Engineer (Electrical). According to him, as per the orders of the 5th respondent, he was relieved from the organization of the 3rd and 4th respondents on 31-3-1999 and joined in the organization of the 1st and 2nd respondents.

The grievance of the petitioner is that the service rendered by him with the 3rd and 4th respondents from 12-02-1990 to 31-03-1999 has to be taken as continuity of service.

The specific case of the 3rd and 4th respondents is that the petitioner submitted his resignation and therefore, the question of keeping lien with their organization does not arise. Though both the organizations are under the control of Ministry of Shipping, the management of the 1st and 2nd respondents is entirely different from that of the 3rd and 4th respondents.

The petitioner submitted a representation to the 5th respondent requesting to transfer him as Foreman on compassionate basis, even though it is lower scale than his present scale in the existing vacancy in the organization of respondents 1 and 2. Thereafter, on the basis of the recommendations of the 5th respondent, the 1st respondent appointed him as Foreman (electrical) on compassionate basis.

It is contended by the learned counsel for the petitioner that the 3rd and 4th respondents insisted the petitioner to tender his technical resignation and the 3rd and 4th respondents stated that unless and until, he tenders technical resignation, he would not be relieved.

With a view to joining in the Visakhapatnam Port Trust, the petitioner might have given resignation. Instead of relieving him, respondents 3 and 4 might have been obtained the resignation from him and the said resignation cannot be said to be a true resignation in the sense that he has to forego his service and benefits rendered by him in the organization of the 3rd and 4th respondents. Apart from the said facts, from the very beginning of the case, the petitioner requested to transfer him from Port Blair to Visakhapatnam and therefore, by no stretch of imagination, it can be said that the so called resignation is a resignation in the true meaning so as to forego all his benefits. Even though respondents 3 and 4 treated it as a technical resignation, the petitioner withdrew the same, but it was not accepted. Since the 1st and 2nd respondents have no objection to take the petitioner as a Foreman in the last category of seniority, respondents 3 and 4 ought to have relieved him keeping his lien so that, the petitioner is permanently absorbed with respondents 1 and 2. The petitioner made a detailed representation to the 5th respondent in the year 1999, but the 5th respondent has not taken any action so far. To some extent, the 3rd and 4th respondents were also right in taking the resignation from the petitioner because they cannot transfer the petitioner from their organization to Visakhapatnam. Perhaps, respondents 3 and 4 called the resignation of the petitioner as a technical resignation because two managements of the port trust are entirely different. About his transfer and posting, the proceedings of respondents 3 and 4 also indicate that it was a transfer. The said proceedings read as follows:

"The Chief Port Administrator, Port Management Board, Port Blair hereby accepts the Technical Resignation tendered by Sri R.Joga Rao to his post of J.E. (Electrical) in PMB in scale Rs.5,000-8,000/- w.e.f. 31.03.99 (AN) consequent to his transfer and posting as Foreman (Electrical) in

the scale of Rs.2,700-5,690/- under Chief Mechanical Engineer in Mechanical/Electrical Department, Visakhapatnam Port trust.

He is hereby relieved on A.N. of 31st March, 99 in terms of CME-VPTs letter No.E/A/RJR/2670, dated 11.03.99 and directed to report for duty under CME-VPT forthwith.”

The above Office Order issued by the 3rd and 4th respondents says that the petitioner was relieved on the afternoon of

31-3-1999 and directed to report to the 1st and 2nd respondents forthwith. If it is a resignation in the true sense, there is no question of giving direction to the petitioner to join at 1st and 2nd respondents. Therefore, under any circumstances, the service rendered by the petitioner from 12-02-1990 to 31-3-1999 with respondents 3 and 4 has to be reckoned as a service rendered by the petitioner and the same shall have to be treated as a continuity of service. However, this court is unable to accept the contention made by the learned counsel for the petitioner that the past service rendered by the petitioner in the air force from 16-8-81 has to be taken into consideration under Rule 19 of the CCS (Pension) Rules, 1972. The said Rule has no application because the petitioner rendered his service in the military service. Therefore, the prayer to the extent of counting his service from 1981 onwards is rejected and the 1st and 2nd respondents shall treat the service rendered by the petitioner with 3rd and 4th respondents from 1990 to 1999 as continuity of service only for the purpose of pension and all other terminal benefits.

It is contended by the 3rd and 4th respondents that this court has no territorial jurisdiction to entertain the cause in the writ petition in view of the fact that they are outside the territorial jurisdiction of this court.

Since the petitioner is seeking to count the services rendered by him in the Port Blair as service rendered by him in the Visakhapatnam port, the cause of action arose within the jurisdiction of this court. Therefore, the contention of the respondents is untenable, and hence the same is rejected.

Accordingly, the writ petition is allowed to the extent indicated above. No costs.

14-07-2005

Mjl/*

To,

- 1 The Chairman, Visakhapatnam Port Trust, Visakhapatnam -530 035
- 2 The Chief Mechanical Engineer, Visakhapatnam Port Trust,

Visakhapatnam -530 035

- 3 The Chief Port Administrator, Port Managment Boards, Andaman &

Nicobar Islands, Port Blair

- 4 The Assistant Secretary (Shipping), Secretariat
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